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Group Art Unit: 3727

Remarks/Arguments

Claims 3-11, 27-29, 31-33, 36-59, 63-82, and 84-95 are currently pending in the application. By this amendment claim 83 was amended to clarify the side wall and top wall structure previously referred to as a wall with a top edge. Claims 84 and 88 were amended to clarify the relationship between the dome-shaped cap and the mounting ring. Claim 88 was amended to change "insert" to "inset". Claim 89 was amended to remove the reference to "low cost." The dependency of claim 79 was changed to claim 78. Claim 64 was amended for consistency with its independent claim.

It is respectfully submitted that the amendments to the claims do not introduce any new matter into the application. Reexamination and reconsideration of the application is respectfully requested.

Initially, Applicants wish to thank the Examiner for the acknowledgement of allowable subject matter in dependent claims 4-7, 27-29, 31-33, 41-43, 58, 59, 64, 71-74, 78, 79, 85-87, 94, 95. However, for the reasons stated below, Applicants' believe all of the claims in the application to be allowable and have therefore opted not to rewrite the dependent claims in independent form.

Claims 3-7, 9-11, 36-59, 63-81, 83, and 88-95 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The rejection is respectfully traversed.

The indefiniteness rejection was based on informalities in various claims. It is respectfully submitted that the amendments to claims overcome the informalities and that the claims are definite. Withdrawal of the rejection is respectfully requested.

Claims 84 and 88 stand rejected under 35 USC 102(b) as being anticipated by Payne et al. (US 4,138,033). The rejection is respectfully traversed.

Payne '033 discloses a disposable lid having a non-dome-shaped cap 20 in which is formed a drink opening formed therein and which is closed by a flap 12 integrally formed with the cup mount.

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For Payne '033 to anticipate claims 84 and 88, each element of the claims must be found in Payne '033. As such is not the case, the rejection must fail. Both claims 84 and 88 call for a dome-shaped cap. The lid of Payne '033 is planar and does not define a dome-shape. Moreover, claims 84 and 88, as amended, clarify that the dome-shape requires the upper surface of the cap to be above the cup mount. The lid of Payne '033 discloses a cap that is below the mount. Therefore Payne '033 does not anticipate the claims as asserted in the Office Action.

Claims 3, 9-11, 36-40, 44-46, 48-50, 52-57, 63, 65-67, 68-70, 75-77, 80-81, 83, and 89-93 stand rejected under 35 USC 103(a) over Freek (US 5,996,837) in view of Waterbury (US 4,232,797). The rejection is respectfully traversed.

Freek '837 is directed to a lid with a disposable, dome-shaped cap extending from a cup mount. A side wall completely encircles the upper surface of the cap and terminates in a top wall in which a drink opening 20 is formed. Freek '837 has no structure for reclosing the drink opening 20.

Waterbury '797 is directed to a traditional soda can comprising a side wall 10 and an upper lid 11 that is fixedly coupled to the side wall 10 by a chime 12 in the form of rolled or folded-over portions of the lid and side wall 10. The lid 11 is positioned below the chime 12 and the top edge of the side wall 10. A drink opening is formed in the lid and is sealed by an articulated closure comprising a mounting element 14, a closure element 15 connected to the mounting element 14 by a hinge connection 16 and a lift element 17 connected to the closure element by a hinge connection 18.

The rejection is improper in that Waterbury '797 is non-analogous art because Waterbury is not directed to the same field of invention of Applicants' invention or directed to solving the same problem faced by Applicants. Waterbury '797 is directed to the easy-to-open container art having flip-top tab closures of the type commonly used to distribute soda and the like. This art is not the same field of invention as Applicants' invention, which is the art of disposable lids for drinking cups. Moreover, Waterbury '797 focuses on solving the problem of having a flip-top tab closure that remains attached to the lid after opening. Waterbury '797 was overcoming the flip-top tab closure where users would regularly discard the flip-top after opening the can. This

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problem is unrelated to Applicants' problem of providing a disposable, recloseable lid. Therefore, Waterbury '797 is non-analogous art and the rejection must fail as the combination is improper.

Assuming, *arguendo*, that Waterbury '797 is analogous art, the combination is still not tenable as there is no teaching or suggestion to make the combination.

Freek '837 discloses a non-recloseable lid. As such, Freek '837 has no teaching or suggestion for adding the recloseable closure of Waterbury '797 to Freek '837. In fact, Freek '837 teaches away from making such a combination. A closer look at the references in light of the combination arguments should prove insightful.

The Office Action asserts that Freek '837 discloses a "plug" by referring to the language at Col. 3, lines 61-65: "While the preformed opening 20 is illustrated as being merely an opening in the lid, the opening 20 may include a cover or plug which may be readily removed by the consumer prior to consumption of the contents of the cup." This disclosure in Freek '837 is not to a recloseable closure tab. That is, the plug disclosed in Freek '837 is nothing more than a one-use plug or seal that can be removed from the opening. Freek '837 expressly states that the plug is removed by the consumer prior to consumption of the contents. When the plug in Freek '837 is removed, the lid of Freek '837 will remain permanently opened.

As Freek '837 does not disclose a recloseable tab, there is no teaching or suggestion to combine the articulated tab of Waterbury '797 with Freek '837. As Freek '837 contemplates a permanently opened container once the plug is removed, Freek '837 teaches against adding a recloseable closure. Therefore, there is no teaching or suggestion to make the combination as asserted in the Office Action.

It is respectfully submitted that the Office Action improperly characterizes terms used in the claims in an attempt to force the combination of Freek '837 and Waterbury '797 to reach the claims. In the claims at issue, the closure tab is defined as having a mounting plug and a drink plug, which are connected by a strap. The mounting plug is used to affix the closure tab to the lid and the drink plug is used to selectively close the drink opening. Thus, the plugs as claimed are not equated with the entire closure tab, but are part of the closure tab. The Office Action

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improperly equates the term "plug" with the entire closure tab to force the combination. Specifically, the Office Action identifies the plug in Freek '837 and then equates the entire articulated closure of Waterbury '797 with the plug in an attempt to force the logical replacement of the "plug" of Waterbury '797 with the "plug" of Freek '837. However, such a use of the term plug mischaracterizes its meaning in Freek '837 and/or misdescribes the closure of Waterbury '797. The use of the term plug to describe both a plug and the entire closure tab in forming the bases for combining the references is not supported by the references themselves or the claims at issue. Indeed, it smacks of a hindsight reconstruction attempt to force a combination of references to the claims at issue by twisting the meaning of the term plug. For this reason, the combination is further not sustainable.

Assuming, *arguendo*, that the combination is tenable, it still does not reach the claimed invention. If the articulated closure of Waterbury '797 were combined with the lid of Freek '837 as suggested in the Office Action, only the closure element 15 of Waterbury '797 need be combined with Freek '837 to close the drink opening of Freek '837 as described in the cited portion of Freek '837. In other words, only the portion of the Waterbury '797 closure that functions as the plug would be added to Freek '837. In that way, Waterbury '797 gives structure to the plug described but not shown in Freek '837. The combination would not include or require the transfer of the complete closure of Waterbury '797 as the mounting element 14 and hinge connection 16 are not required by the plug recited in Freek '837.

In short, the combination of Freek '837 and Waterbury '797 would result in the Freek '837 lid with a plug shaped like the closure element 15 of Waterbury '797. Such a plug would be a one-use plug and not recloseable as is the teaching of Freek '837.

Independent claims 83 and 89, the only independent claims rejected by the combination, are not obvious in view of the combination. Both claim 83 and 89 call for a tab closure comprising a mounting plug and a drink plug connected by a strap, the mounting plug sized to be received within the mounting recess, and the drink plug sized to be received within the drink opening wherein the user can open and close the lid by removing or inserting the drink plug from the drink opening. The closure tab as claimed is for a tab that is affixed to the lid and which can

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be selectively moved to repeatedly reclose the drink opening. The alleged combination does not teach a disposable, recloseable lid comprising the closure tab as claimed. Therefore, the independent claims are patentable over the alleged combination because the combination does not disclose an entire element of the claims.

The rejected dependent claims are patentable for the same reasons as the independent claims.

Therefore, it is respectfully submitted that all of the claims remaining in the application are allowable over the prior art of record. Early notification of allowability is respectfully requested.

Please contact the undersigned attorney if there are any questions regarding this matter.

Respectfully submitted,

ROBERT C. DART, RYAN P. GINGRAS & TODD ATKINS

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By: 

Mark A. Davis, Reg. No. 37,118
MCGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

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